IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.6.2006

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

C.R.P.(NPD)No.1326 OF 2003

G.Venkatesan alias Balaji ... Petitioner (Tenant)

vs.

S.D.Ramamurthy Reddiar ... Respondent (Landlord)

Civil Revision Petition against the Judgment and decree dated 31.3.2003 made in R.C.A.No.15 of 2000 passed by the VIII Judge, Small Causes Court, (Rent Control Appellate Authority), Chennai, reversing the order and decretal order dated 24.9.1999 made in R.C.O.P.No.466 of 1996 passed by the learned 15th Judge, Small Causes Court, (Rent Controller) Chennai.

For petitioner : Mr.K.Kumaraswamy
For respondent : Mr.V.C.Venkataraman

ORDER

This civil revision petition has been filed against the judgment and decretal order, dated 31.3.2003, made in R.C.A.No.15 of 2000 passed by the VIII Judge, Small Causes Court,(Rent Control Appellate Authority), Chennai, reversing the order and decretal order, dated 24.9.1999, made in R.C.O.P.No.466 of 1996 passed by the learned 15th Judge, Small Causes Court, (Rent Controller) Chennai.

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2. It is the case of the petitioner that he is a tenant in occupation of the rear portion of the petition premises, namely, 14, Eswaran Koil Street, West Mambalam, Chennai from the year 1971. He had occupied the premises for residential and non-residential purpose. Later on, a portion of the land, in front side of the portion occupied by him, was taken by him as additional tenancy for non- residential purpose for carrying on business in lending books as a library and constructed a thatched shed thereon. The rent for original portion was Rs.200/- per

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month. At the time of taking additional portion for non-residential purpose the rent was fixed as Rs.150/- per month and that he was paying a total of Rs.350/- per month as rent for both the portions together. Subsequently, the thatched shed which was used as the non-residential portion had collapsed and he was not allowed to re-build the same. Therefore, he had paid only Rs.200/- as monthly rent for the residential portion alone. Since a dispute arose with regard to the rent, R.C.O.P.No.466 of 1996 was filed by the landlord, who is the respondent in this civil revision petition, on the ground of wilful default in payment of the monthly rent at the rate Rs.350/- and also on the ground of additional accommodation for his family.

3. The learned Rent Controller had dismissed the R.C.O.P. holding that there was no wilful default in the payment of monthly rents and there is no bona fide on the part of the landlord for demanding the petition portions of the premises for additional accommodation.

4. Against the said order of the learned Rent Controller, the respondent/landlord had preferred an appeal in R.C.A.NO.15 of 2000 on the file of the VIII Judge, Small Causes Court, Chennai. The learned Appellate Authority had reversed the order of the learned Rent Controller by his order, dated 31.3.2003, on both the grounds of wilful default and additional accommodation and ordered eviction of the petitioner/tenant.

5. Against the said order of the Appellate Authority, dated 31.3.2003, the present civil revision petition has been filed.

6. Heard the learned counsel for the petitioner as well as the respondent.

7. The learned counsel for the petitioner states that the learned Rent Controller, after considering the merits of the case, has clearly held that there was no wilful default and also dismissed the Rent Control Petition on the ground of additional accommodation. One of the grounds, on which the learned Rent Controller had dismissed the R.C.O.P is based on the suit in O.S.No.8981 of 1995 filed by the petitioner/tenant. The rent Controller has come to the findings based on the submissions made by the petitioner/tenant that on the first date of hearing of the petition the arrears of rent had been paid to the respondent/landlord. Based on the fact that O.S.No.8981 of 1995 had been filed by the petitioner/tenant not to evict him from the suit premises without following the due process of law, he has come to the conclusion that the relationship between the landlord and the tenant was strained and there was a dispute between the landlord and the tenant after August, 1995 and therefore the landlord had refused to take the rent offered by the tenant. It only leads to the conclusion that there was no wilful default in payment of the rent.

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8. With regard to the second ground of additional accommodation, the Rent Controller has found that the petitioner/tenant has been carrying on the business of lending books in the petition premises and there was no evidence to show that the respondent/landlord's wife has been suffering by arthritis and that she could not climb stairs and it has not been substantiated by any other evidence except the oral evidence of the respondent/landlord. Further, there was no evidence apart from the oral evidence of the respondent/landlord with regard to the expansion of his family and that he requires additional accommodation for use of his family members. The Rent Controller has dismissed the R.C.O.P. on the fact that the respondent/landlord had admitted that there are three rooms at the ground floor which were not occupied by the tenants, but wherein old and unused goods have been stocked. Further, there was no medical evidence furnished by way of certified proof as to the inability of the respondent/landlord's wife to climb the stairs and even with regard to the aspect of relative hardship, the rent Controller has found in favour of the petitioner/tenant. Therefore, he has dismissed the Rent Control Original Petition filed for eviction of the petitioner/tenant by the respondent/landlord.

9. On appeal, the Appellate Authority has allowed the appeal filed by the respondent/landlord and found that the petitioner/tenant has wilfully defaulted in payment of rent from August, 1995 to December, 1995 amounting to Rs.1,750/- in spite of various notices having been sent to him. On the second ground of additional accommodation he has found that the daughter and sons of the respondent/landlord are married and the third daughter is residing with him in the petition premises and it is also found that his wife is suffering from joint pains and she could not climb the stairs. Therefore, requirement of the landlord for additional accommodation is valid and sustainable in law and that the relative hardship is in favour of the landlord.

10. It is seen, during the trial, the respondent/landlord got himself examined and his daughter Ms.Chandra and he has marked six documents in his favour. The petitioner/tenant also had himself examined and marked eleven documents with regard to the payment/tendering of rent by the petitioner/tenant and refused by the respondent/landlord. It has been found that even though the landlord had refused to accept the rent, it is still open to the tenant to deposit the amount in Court for which in fact he has taken steps by filing a petition under Section 8 (5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. However, when the petition had been returned, he had not re-presented the same, thereby making the non-payment of rent as wilful. With regard to the subsequent conduct, which has also been taken into account, the petitioner/tenant had defaulted in paying the subsequent rent as well and even during the pendency of the R.C.O.P. as well as the R.C.A., no rents had been paid to the respondent/landlord and for nearly eight years the tenant had defaulted in payment of the rents.

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11. Taking into account the facts and circumstances of the case, on perusal of the records referred to before this Court and based on the arguments adduced by the learned counsel for the petitioner as well as the respondent, this Court is of the considered view that there is no material irregularity or illegality committed by the rent Control Appellate Authority in reversing the findings of the Rent Controller made in R.C.A.No.15 of 2000 on 30.3.2003. Three months' time is granted to the petitioner to vacate the premises and to hand over vacant possession.

12. Therefore, this civil revision petition stands dismissed. No costs. Consequently, connected C.M.P.No.14637 of 2003 is closed.

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Sd/-Asst.Registrar,
Dt/-04.07.2006.

Corrected Order to
be issued.
Sd/-Asst. Registrar,
Dt/-24.07.2006.

/true copy/

Sub Asst.Registrar

To

1. The Registrar,]
Court of Small Causes, Madras.]
2. VIII Judge, Small Causes Court,]
(Rent Control Appellate Authority),]
Madras.]
3. XV Judge, Small Causes Court,]
(Rent Controller) Madras.] To be substituted for the
4. The Record Keeper,] Order already despatched on
V.R.Section, High Court,] 17.07.2006.
Madras-104.]
1 cc To Mr.V.K.Kumarasamy,]
Advocate, SR.No.27354.]
1 cc To Mr.V.C.Venkataraman,]
Advocate, SR.No.27413.]

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JP(CO)
RVL 05.07.2006
gp/25.7.2006.

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